

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment)	WT Docket No. 17-79
by Removing Barriers to Infrastructure)	
Investment)	
)	

COMMENTS OF SAMSUNG ELECTRONICS AMERICA, INC

Samsung¹ submits these comments in response to the above-captioned Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking and Notice of Inquiry.² Samsung applauds the Commission for launching this proceeding to examine regulatory barriers to wireless network infrastructure investment and deployment, and for recognizing the importance and urgency of removing or reducing any unnecessary barriers to such deployment. As an innovator and investor in 5G technologies, both independently and in collaboration with wireless carriers, Samsung appreciates the Commission’s recognition that achieving the benefits of next-generation broadband in the United States requires an updated regulatory framework for infrastructure deployment. The record in this proceeding unquestionably will show that Commission action is needed to streamline wireless network deployment in response to Americans’ exploding demand for broadband services. Specifically, the Commission should accelerate and strengthen its shot clocks, provide guidance regarding the scope and application of Sections 253 and 332 of the Communications Act, and streamline its own environmental and historic preservation review processes. None of these changes would

¹ For purposes of these comments, “Samsung” refers to Samsung Electronics America, Inc.

² *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 17-79, FCC 17-38 (2017) (“NPRM”).

harm the public interest or otherwise frustrate legitimate public policy goals of infrastructure review processes. Through actions in this proceeding, the Commission also can stimulate wireless infrastructure investment, which ultimately will benefit the U.S. economy and create new jobs.

I. INTRODUCTION

Commission action to streamline the wireless siting process, especially for small cells that will be used to densify networks, is essential to facilitating wireless deployment necessary to meet consumer demand for broadband. Network design is evolving in response to continually increasing consumer demand and spectrum propagation characteristics, and infrastructure regulation must similarly evolve. Small cells used in network densification are increasingly important to provide capacity where needed and to enable the massive throughput and instantaneous response times of 5G, especially at higher frequencies where propagation losses are greater and will lead to increased deployment of small cells. 5G is a key foundational technology that will serve as the core architecture for the Internet of Things (“IoT”), supporting groundbreaking applications and increasing the ability of mobile services to enrich daily life.³

Connecting the projected billions of IoT devices to each other will place unprecedented demands

³ In February, Samsung unveiled its end-to-end portfolio of 5G mobile network products and solutions, including consumer devices for fixed wireless access connectivity, a 5G radio base station, next-generation core network infrastructure, and more. *Samsung announces complete portfolio of commercial 5G products and solutions*, Samsung, <http://www.samsung.com/global/business/networks/insights/news/samsung-announces-complete-portfolio-of-commercial-5g-products-and-solutions> (last visited June 2, 2017). See also Anshel Sag, *Samsung’s 5G Efforts Place Company Among Top 5G Leaders*, *Forbes* (May 9, 2017), <https://www.forbes.com/sites/moorinsights/2017/05/09/samsungs-5g-efforts-place-company-among-top-5g-leaders/#4d98a858255b> (Samsung “is an experienced player across many industries including wireless infrastructure, chip manufacturing, semiconductor fabrication, and user devices. Samsung can effectively make almost everything in a 5G connection from one end to the other, and it has experience in virtually every segment of 5G.”) Samsung currently is conducting a fixed wireless deployment trial with a major U.S. carrier and anticipates deploying its first 5G commercial networks in 2018.

on wireless network infrastructure, and the United States is now in a global race for 5G leadership. Regulatory efforts focused on infrastructure thus must directly promote the deployment of 5G mobile broadband networks to secure America's role with respect to the IoT.

In particular, the facilities being deployed to densify networks are typically collocations that involve little or no ground disturbance, are smaller in profile than traditional macro sites, and have less impact. In contrast, many infrastructure siting regulations and processes were developed with macro cell deployments in mind. As Chairman Ajit Pai repeatedly has noted, application of those legacy requirements to small wireless deployments is not warranted and presents significant financial and other burdens on wireless providers that are not sustainable.⁴

In these comments, Samsung offers several recommendations to modify these outdated processes to account for the characteristics of small cells and to speed infrastructure deployment as providers enhance 4G LTE and roll out next generation 5G networks.

II. THE FCC SHOULD TAKE ADDITIONAL STEPS TO STREAMLINE THE LOCAL SITING PROCESS.

The FCC made significant progress in streamlining the local siting process in 2009, when it adopted initial 90-day and 150-day shot clocks under Section 332 of the Communications Act, and in 2014, when it implemented the 60-day shot clock for certain collocations based on Section 6409(a) of the 2012 Spectrum Act.⁵ Notwithstanding that progress, wireless providers continue

⁴ See, e.g., *NPRM*, Statement of Chairman Ajit Pai, FCC 17-38, at 56.

⁵ *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 (2009) (*2009 Declaratory Ruling*), *aff'd*, *City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013); *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865 (2014) (*2014 Infrastructure Order*), erratum, 30 FCC Rcd 31 (2015), *aff'd*, *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015). As Chairman Ajit Pai noted in supporting the steps the FCC took in the *2014 Infrastructure Order*, “[F]or far too long and in far too many places, a web of municipal, state, and federal regulations has entangled those trying to build infrastructure.” *2014 Infrastructure Order*, 29 FCC Rcd at 13016.

to experience delays that are within the Commission’s power to address. With the rapid and constant increase in consumer demand for wireless products and services, network deployment delays are harmful to the American public. Accordingly, the Commission should take the following steps to streamline local siting processes.

A. All Collocation Requests Should be Subject to a Consistent 60-Day Shot Clock.

The Commission should apply a 60-day shot clock to cover *all* requests to collocate wireless facilities, regardless of whether the support structure already hosts other wireless facilities.⁶ The 60-day shot clock currently applies to collocations covered by Section 6409(a) of the 2012 Spectrum Act, which includes collocations on towers or structures with existing antennas that do not result in a substantial change to the underlying structure.⁷ Collocations on structures that do not have existing antennas are currently subject to the longer (90-day) shot clock adopted pursuant to Section 332 of the Communications Act. However, collocations on the whole are less intrusive than new builds, and there is no reason to distinguish between collocations based solely on the presence of other antennas on the underlying support structure. The Commission therefore should reduce the Section 332 collocation shot clock to 60 days, so that the same 60-day period applies to all collocations.

It is well within the Commission’s authority to change the shot clock period for collocations,⁸ and adoption of a 60-day shot clock for all collocations is reasonable; indeed,

⁶ See *NPRM*, FCC 17-38 at 8 ¶ 18.

⁷ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a) (2012) (“2012 Spectrum Act”), *codified at* 47 U.S.C. § 1455(a).

⁸ Section 332(c)(7) of the Act provides the Commission with discretion to determine what constitutes a “reasonable period of time” for a locality to act on a siting application. 47 U.S.C. § 332(c)(7).

several localities are already processing collocations within that timeframe. For example, Minnesota requires collocation applications to be processed within 60 days, certain collocation applications in Michigan are subject to a 60-day review period while others are exempt from approval requirements, Florida requires collocation applications to be processed in 45 business days, and New Hampshire and Wisconsin require collocation applications to be processed in 45 calendar days.⁹

B. The Commission Should Reduce the Shot Clock Applicable to New Facilities from 150 to 90 Days, Which Will Still Afford Ample Time for Review.

The Commission should reduce the shot clock applicable to new construction from 150 days to 90 days.¹⁰ Allowing localities three months to process applications for new builds is reasonable, and many localities are already acting on applications within this timeframe. For example, Michigan and Virginia require non-collocation applications to be reviewed within 90 days, and Minnesota and Kentucky require non-collocation and new tower applications to be processed within 60 days.¹¹ Reducing the time in which localities must review applications for new builds from five months to three months will provide localities sufficient time in which to review applications while greatly speeding deployment processes for the hundreds of thousands of new sites needed to support 5G services.

⁹ Minn. Stat. § 15.99, Subd. 2(a); Mich. Comp. Laws Serv. § 125.3514(1)-(6).

¹⁰ *2009 Declaratory Ruling*, 24 FCC Rcd at 14004, 14012-13 ¶¶ 32, 45-48. As discussed above, Section 332(c)(7) grants the Commission the authority to take this step.

¹¹ Mich. Comp. Laws Serv. § 125.3514(8); Va. Code Ann. § 15.2-2232(F); Minn. Stat. § 15.99, Subd. 2(a); Ky. Rev. Stat. § 100.987(4)(c).

C. The Commission Should Expand the “Deemed Granted” Recourse to Cover All Siting Applications.

The Commission should interpret the Section 332 shot clock to include a deemed granted remedy, as the shot clock under Section 6409(a) does for certain facility applications.¹² This step is essential to strengthening the Commission’s Section 332 shot clocks, which are currently being undermined by local non-action followed by extended litigation. While applications subject to 6409(a) are deemed granted if not approved within 60 days, the shot clocks under Section 332(c)(7) only provide that the applicant may seek a judicial remedy if an application is not acted upon within the given time frame.¹³ Applicants must then choose whether to continue to pursue their application with the locality on an undefined timeframe or resort to the time intensive and costly litigation process. The litigation process under the Section 332 shot clocks often takes years and, in many cases, simply results in applicants being redirected back to the local jurisdiction for a decision. To avoid this result, and to give the shot clocks teeth, the Commission should adopt a deemed granted remedy for applications under Section 332(c)(7).

The Commission has legal authority to expand the deemed granted remedy for all siting applications. First, the Commission has broad authority to adopt rules to carry out the objectives of the Communications Act and to facilitate broadband deployment under the Telecommunications Act.¹⁴ Second, the Commission has authority to create an irrebuttable presumption that the applicable shot clock deadlines are reasonable, such that a failure to act

¹² 2012 Spectrum Act, § 6409(a).

¹³ *2009 Declaratory Ruling*, 24 FCC Rcd at 14008-10 ¶¶ 37-42.

¹⁴ 47 U.S.C. §§ 154(i), 201(b), 303(r); *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 (1999) (“[T]he grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the ‘provisions of this Act.’”)

would result in a deemed grant.¹⁵ Third, the Commission can rule that if a locality fails to meet its obligation under the authority reserved for it in Section 332(c)(7) to act on an application within a reasonable period of time, then its authority over decisions concerning the application lapses. At that point, no local regulator would have authority to approve or deny the application and the applicant could proceed.¹⁶ The reference to a judicial remedy in Section 332 does not preclude the Commission from expanding the deemed granted remedy. Section 332 on its face provides that the judicial remedy is not exclusive or mandatory; rather, Section 332(c)(7)(B)(v) provides that a party “may” commence an action in court.¹⁷

D. The Commission Should Provide Guidance on the Scope and Requirements of Sections 253 and 332 of the Communications Act to Limit Wayward Localities.

The Commission should state that moratoria, including *de facto* moratoria, on the acceptance and processing of wireless siting applications violate Sections 332 and 253 of the Communications Act. Sections 332 and 253 both prevent localities from taking action that “prohibit or have the effect of prohibiting” the ability of any entity to provide service.¹⁸ Moratoria completely block deployment and therefore prohibit providers’ ability to provide service. While, as noted in the *NPRM*, the Commission briefly addressed moratoria and stated that shot clock deadlines would continue to run regardless of any moratoria,¹⁹ some localities have continued to refuse to grant permits while they develop new regulations covering

¹⁵ See *NPRM*, FCC 17-38 at 5 ¶ 10.

¹⁶ *Id.* at 7 ¶ 14.

¹⁷ 47 U.S.C. § 332(c)(7)(B)(v).

¹⁸ 47 U.S.C. § 332(c)(7); 47 U.S.C. § 253(a).

¹⁹ *2014 Infrastructure Order*, 29 FCC Rcd at 12971 ¶ 265.

deployment. To remove any uncertainty, the Commission should definitively state that moratoria, and these types of *de facto* moratoria, violate both Sections 332(c) and 253(a).

The Commission also should identify other types of practices that could prohibit or have the effect of prohibiting entities from providing service in violation of Sections 253 and 332. For example, undergrounding requirements (which are not feasible for wireless deployments), obligations to demonstrate gaps in service or otherwise justify the need for a particular site, equipment, or technology, and fees for application processing and access to rights-of-way that are not based on the locality's costs of reviewing applications and providing such access may prohibit or have the effect of prohibiting entities from providing service and may therefore violate Sections 253 and 332.

III. THE COMMISSION SHOULD TAKE STEPS TO STREAMLINE AND INCREASE THE PREDICTABILITY OF ITS SITING REVIEW PROCESSES.

A. To Avoid Unnecessary Delays in Wireless Facility Deployment, the Commission Should Establish Timeframes for Acting on NEPA Environmental Review Issues.

The Commission should set timeframes by which it will act on environmental review issues under the National Environmental Policy Act ("NEPA"), including disputes over requests for additional environmental processing and consideration of Environmental Assessments ("EA"). The Commission's rules require an applicant to prepare and file an EA if its proposed construction meets several of any conditions specified in the rules.²⁰ However, the Commission is not subject to any processing timelines or dispute resolution procedures related to EAs, and these issues can remain pending for months or even years. Additionally, in cases where an applicant does not file an EA, third parties may file objections seeking further environmental review under the Commission's rules, and such cases similarly are not subject to any timelines

²⁰ 47 C.F.R. §§ 1.1307(a), 1.1308(a), 1.1312(b).

for resolution.²¹ The Commission should set timelines for acting on EAs and disputes under NEPA to eliminate delays.

B. The Commission Should Adopt Procedures to Clarify and Provide Certainty Regarding the Historic Preservation Consultation Process under Section 106 of the NHPA.

The Commission should simplify and broaden the exclusions from review under Section 106 of the National Historic Preservation Act (“NHPA”) for small wireless facilities that have a reduced footprint and potential for impact. The Commission may exclude activities that are expected to have no or minimal impact on historic properties from Section 106.²² The Commission should exercise that authority to expand the exclusions from Section 106 review for small wireless facilities because they are not likely to impact historic properties due to their small size. Specifically, the Commission should adopt the proposals included in the NPRM; it should: exclude replacement poles from Section 106 review regardless of whether the pole is located in a historic district and when the pole was constructed for a purpose other than supporting antennas; expand the Nationwide Programmatic Agreement exemption from Section 106 review for construction of wireless facilities in rights of way to include transportation rights of way; and exclude from review collocations located between 50 and 250 feet from historic districts.

The Commission also should improve the process for tribal consultation on non-tribal lands by providing a definitive process that enables applicants to move forward with siting on non-tribal lands in the event a tribe expresses interest in reviewing a site but then becomes non-responsive. The Commission’s rules require providers to submit documentation or proposed

²¹ See *NPRM*, FCC 17-38, at 16-17 ¶ 40.

²² 36 C.F.R. §§ 800.3(a)(1), 800.14(c).

projects in the tower construction notification system (“TCNS”). The database then determines whether any tribe has expressed interest in the area and then sends the documentation provided by the carrier to any interested tribes. If a tribe indicates that it wants to review the project, the carrier cannot begin construction until the tribe responds or the Commission notifies the carrier that it can proceed. Currently there are no limits on the time tribes can take to review a project and no formal processes in place to complete the process with respect to a tribe that becomes unresponsive. To eliminate unnecessary delays, the Commission should adopt a time limit for tribal reviews and a process that will allow applicants to proceed with siting on non-tribal lands in the event a tribe expresses interest in reviewing a site but then does not respond further.

IV. CONCLUSION

The Commission should take the steps outlined above to ease barriers to infrastructure deployment and facilitate the roll-out of next generation 5G services. Doing so will strengthen US leadership in 5G, stimulate investment and job growth, and benefit all Americans.

Respectfully submitted,

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